

## **REMARKS**

This communication responds to the Office Action mailed August 6, 2008 for the application captioned above. Applicants have carefully reviewed the Office Action mailed August 6, 2008. By this Amendment, claims 1, 13, 19, 20, 21 and 29 are amended and claims 3 and 15 are canceled. New claim 31 is added. With entry of this Amendment, claims 1-2, 4-14 and 16-31 are pending in this application. No new matter is introduced with this Amendment.

### **Objections Under 35 U.S.C. §112**

In the Office Action, the Examiner objected generally to claims 1-18, 20-21, and 29 under 35 U.S.C. §112, second paragraph, as being indefinite and more specifically to claims 1 and 13 under the same paragraph for using the term “substantially.” The Applicant traverses this objection.

One of ordinary skill in the art would understand the meaning of “substantially” denaturing or inactivating enzymes as called for in claims 1 and 13 and as described in the specification. The specification teaches how heat can be applied to the avocado for a period of time under conditions which substantially denature the degradative enzymes. As a result of substantially denaturing the enzymes, the reaction which causes the degradation of fat and which leads to browning and rancidity of the avocado are inhibited, such that the browning and rancidity of the avocado are reduced. Therefore one of ordinary skill in the art would understand the meaning of “substantially” denaturing the enzymes.

The Examiner has also objected to claims 20 and 21 under 35 U.S.C. §112, second paragraph, as having a lack an antecedent basis. Claims 20 and 21 have been amended to address this objection.

The Examiner has objected to claim 29 under 35 U.S.C. §112, second paragraph, as being indefinite for using the term “minimal.” Claim 29 has been amended, deleting the word “minimal” and adding “cutting the avocado into two to four pieces.”

**Rejections Under 35 U.S.C. §103(a)**

In the Office Action, the Examiner rejected claims 1-17 and 29 under 35 U.S.C. 103(a) as being unpatentable over Takahashi (U.S. Patent No. 6,358,555) in view of Rogers et al. (U.S. Patent No. 4,701,330). The Applicant traverses this rejection.

Takahashi teaches a process for producing frozen avocado including heating avocado in a solution containing baking powder as one of a number of disclosed and claimed process steps, including flash freezing. The Applicant believes and submits that baking powder is neutral and is not alkaline. This is in contrast to baking soda, which is alkaline. Takahashi teaches heating avocado either in water alone or in a water solution containing baking powder, vinegar and salt. Alternatively, the water solution may contain Japanese sake and sugar. None of these solution are utilized in Applicant’s invention. The Applicant believes that each of these solutions is either neutral or acidic, and that none of them is alkaline. Therefore, Takahashi fails to teach heating the avocado in an alkaline environment, much less in an environment having a pH greater than 8. Further, there is no teaching in Takahashi suggesting the elimination of the freezing step required by the method of Takahashi or that a desirable avocado product could be obtained were the step eliminated.

Rogers is concerned with the preservation of chlorophyll in blanched vegetables but provides no teaching about the processing of avocados, which are fruits and which have unique properties. The green vegetables disclosed in Rogers do not contain high levels of fat and

Rogers contains no teaching or recognition relating to inhibiting enzymatic degradation of fat. It is the presence of high fat content and of degradative enzymes in avocados, among other characteristics, which makes avocados unusually difficult to manage and preserve. Because of the unique nature of avocados, one would not apply the Rogers reference, which is limited to typical green vegetables, to an avocado. Therefore there is not sufficient objective evidence present for a showing of obviousness, that would prompt one of ordinary skill in the art to eliminate the freezing step of Takahashi and combine Takahashi's heating of avocado in a neutral or acid environment with the alkaline submersion of blanched vegetables of Rogers.

Further, it was believed in the art that the enzymes responsible for browning in avocados are slowed in highly acidic conditions and it is for this reason that lemon juice and lime juice are commonly used in avocado containing foods such as guacamole. See p. 6 lines 3-9 of the specification, citing On Food and Cooking, the Science and Lore of the Kitchen. This knowledge regarding avocado would teach one away from applying the alkaline environment of Rogers to avocado fruit.

Furthermore, because Takahashi teaches heating avocados in a neutral or acidic environment, one would not consider heating the avocados in an alkaline environment, since this would be contrary to the teaching of Takahashi. Rogers may teach that it is beneficial to submerge green vegetables in an alkaline solution, but this teaching relates specifically to green vegetables and not to avocado fruits. One, therefore, would not alter the teaching of Takahashi, which relates specifically to avocado fruits, to apply teachings that relate only to green vegetables.

In addition, even if one were to combine Takahashi and Rogers, it is unlikely that one would heat the avocado in an alkaline environment, since this is contrary to the teaching of

Takahashi. Rather, such a combination would, at most, lead one to heat the avocado in a neutral or acidic environment and to submerge the avocado in an alkaline solution as a separate step, followed by flash freezing; and such a combination would not result in the present invention as disclosed and claimed. Nevertheless, the Applicant maintains that one would not apply the teachings of Rogers to an avocado due to the distinct properties of the avocado.

The Examiner has rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Takahashi in view of Rogers et al. and further in view of Andonian et al. (U.S. Patent No. 4,374,153). The Applicant traverses this rejection for the reasons explained above with regard to claims 1 – 17 and 29. Andonian et al. relates to dehydrated onions and provides no teaching relative to the processing of avocado fruit. Therefore, Andonian fails to teach the elements which are missing from Takahashi and Rogers as described above and does not cure the deficiencies of the reference combination.

The Examiner has rejected claims 19-23 and 25-28 under 35 U.S.C. 103(a) as being unpatentable over Brito (U.S. Patent No. 5,871,794) in view of Takahashi and Rogers. The Examiner has also rejected claim 24 under 35 U.S.C. 103(a) as being unpatentable under over Brito in view of Takahashi and Rogers et al. The Applicant traverses these rejections for the reasons explained above with regard to claims 1 – 17 and 29. Brito teaches a process of preparing quacamole involving mixing avocado and tomatillo pulp, followed by heating. However, Brito does not teach heating avocado alone or the avocado/tomatillo mixture under alkaline conditions of greater than pH 8 as called for in claims 19 – 23 and 25 – 28. Therefore Brito fails to teach the elements of the claims which are missing from Takahashi and Rogers as described above and does not cure the deficiencies of the reference combination.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910. The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

Date: December 8, 2008

/Adonis A. Neblett/

Adonis A. Neblett  
Registration No. 32,358

**Customer No. 22859**

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425 USA  
Telephone: (612) 492-7000  
Facsimile: (612) 492-7077

4422795\_1.DOC